

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Mariano Madrid,

5 Petitioner

6 v.

7 Dwight Neven, et al.,

8 Respondents
9

2:15-cv-00118-JAD-PAL

Order Dismissing Case

10 Pro se petitioner Mariano Madrid is serving two consecutive life sentences with the
11 possibility of parole after 20 years after his conviction for first-degree murder with a deadly-
12 weapon enhancement.¹ He filed this mixed petition for a writ of habeas corpus with exhausted
13 and unexhausted claims, and I directed Madrid to choose one of three options: (1) abandon the
14 unexhausted claims and proceed on the exhausted claims only; (2) dismiss this federal action and
15 return to state court to exhaust his unexhausted claims; or (3) file a motion to stay and abey his
16 exhausted claims and return to state court to exhaust his unexhausted claims.²

17 Madrid chose the third option, but he did not make the required showing under *Rhines v.*
18 *Weber*³ to permit me to grant him a *Rhines* stay, so I denied his motion and directed him to
19 choose one of the other two options.⁴ Instead of choosing one of the other two options, Madrid
20 filed a renewed motion to stay and abey his exhausted claims that still failed to satisfy *Rhines*, so
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24 ¹ NEVADA DEP'T OF CORRECTIONS, <https://www.doc.nv.gov/Inmates/Home/> (last visited Nov.
25 22, 2017) (inmate search by name Mariano Madrid or by offender ID 1006135).

26 ² ECF No. 20.

27 ³ *Rhines v. Weber*, 544 U.S. 269 (2005).

28 ⁴ ECF No. 24.

1 I denied that as well.⁵


2 I gave Madrid one more opportunity to either abandon his unexhausted claims and
3 proceed on the exhausted ones or return to state court to exhaust his unexhausted claims. Madrid
4 decided to return to state court to exhaust his unexhausted claims,⁶ so I dismiss this action
5 without prejudice to his ability to file a new, separate petition for habeas corpus after he exhausts
6 his claims in state court—subject of course to any statutes of limitations. I also decline to issue
7 Madrid a certificate of appealability because reasonable jurists would not find my decision to
8 dismiss this action without prejudice to be debatable or wrong.

9 Accordingly, IT IS HEREBY ORDERED that this case is **DISMISSED without**
10 **prejudice.**

11 IT IS FURTHER ORDERED that a **certificate of appealability is DENIED.**

12 The **Clerk of Court** is directed to **ENTER JUDGMENT accordingly and CLOSE**
13 **THIS CASE.**

14 DATED: November 27, 2017.

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16 U.S. District Judge Jennifer A. Dorsey
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26 _____
27 ⁵ ECF No. 30.

28 ⁶ ECF No. 31.